United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/932
15 November 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 932

Case No. 1023: AL ARID

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Hassan Mohammed Al Arid, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997, 28 February and 31 October 1998, the time-limit for the filing of an application with the Tribunal;

Whereas, on 12 June 1998, the Applicant filed an application requesting the Tribunal to:

"...

i. [Rescind the] decision of summary dismissal.

ii. [Reinstate the] Applicant to duty effective the date of [his] suspension, and considering the period of his cessation, as a special leave with full pay plus interest.

iii. [Compensate the Applicant if he is not reinstated] for his due salaries until a judgement has been ordered, [and also compensate him] for the severe injury caused to [him], to be paid in US dollars at the rate available to UN at the time of his separation, [and pay him a] termination indemnity.

iv. [Consider] the decision to deprive Applicant of the Agency contribution to the Provident fund, null and void, being incompatible with the UN General Assembly resolutions, while the amount is relating to his social security.

v. [Pay] counseling fees and secretarial expenses estimated at US $900."

Whereas the Respondent filed his answer on 22 October 1998;

Whereas the Applicant filed written observations on 30 April 1999;

Whereas the Respondent submitted additional documents on 26 October 1999;

Whereas the Applicant submitted additional documents on 7 November 1999;

Whereas the facts in the case are as follows:

Effective 29 May 1985, the Applicant was offered and accepted a temporary indefinite appointment as an Area staff member of UNRWA as Deputy Field Sanitation Officer in the Lebanon Field Office, Beirut. On 1 November 1987, the Applicant was promoted to the post of Field Sanitation Officer, which post was reclassified on 2 January 1988 to Field Sanitary Engineer.

On 18 September 1995, the Director of UNRWA Affairs, Lebanon, convened a Board of Inquiry (BOI) to look into allegations of misappropriation of Agency funds and non-adherence to Agency rules and regulations by staff members in the Technical Department of UNRWA.

On 25 September 1995, in the course of the investigation, allegations were made against the Applicant and, on the same day, the Director of UNRWA Affairs approved the extension of the BOI's terms of reference to include the Sanitation Division and the Applicant.

On 28 September 1995, the Director of UNRWA Affairs advised the Applicant that a charge of serious misconduct had been made against him and that he was suspended without pay pending an investigation of that charge effective that day.

On 25 October 1995, the BOI submitted its report to the Director of UNRWA Affairs. In the report, the BOI noted that one contractor (who happened to be a cousin of the Applicant) had presented evidence indicating that he had made several payments to the Applicant in connection with Agency contracts. In addition to various smaller payments, the contractor specifically mentioned a 1988 payment of $8,000 to the Applicant paid from the contractor's bank - the Banque Nationale de Paris Intercontinentale (BNPI) in Saida - to the Applicant's bank - Banque de la Mediterranee in Saida. The contractor further testified that he had also made a payment of $5,000 by cheque to the Applicant.

The BOI also noted the testimony of another contractor who claimed he paid $8,000 in cash to the Applicant "for and during the implementation of a sewerage project in Burj el-Barajneh camp". The BOI further noted that a third contractor appeared uninvited in the Lebanon Field Office and produced a letter in which he claims that he paid the Applicant the sum of $5,000 "in order to be listed as a class 'A' contractor". Additionally, this third contractor claimed to have witnessed another contractor giving the Applicant "a cheque or paper containing [an] amount [said to be of] $25,000.00 (twenty five thousand) on account".

The BOI had requested the Applicant - who claimed he had no knowledge of the above transactions - to sign a letter addressed to his bank, instructing the bank to waive secrecy and thus enable the BOI to "establish [the Applicant's] account number(s) and the transactions on [those] accounts". The Applicant refused to sign the document.

The BOI concluded: "Based on documentary evidence, [the BOI] unanimously finds that [the Applicant] is guilty of having received bribes from contractors".

On 7 December 1995, the Director of UNRWA Affairs advised the Applicant of the conclusions of the BOI concerning his conduct. The Director of UNRWA Affairs considered that the BOI's finding, that the Applicant had accepted bribes from Agency contractors,

constituted serious misconduct. Accordingly, he was summarily dismissed effective the date of his suspension from duty.

On 16 December 1995 and on 2 January 1996, the Applicant wrote to the Director of UNRWA Affairs and asserted that he had never taken bribes and that the evidence against him was fabricated. In the second letter, the Applicant also requested reconsideration of the "recommendation" to terminate his appointment. On 15 January 1996, the Director of UNRWA Affairs advised the Applicant that he had reviewed his case and advised him that "the decision to summarily dismiss [him] ... [was] maintained.

On 28 January 1996, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 3 March 1997. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION AND JUDGEMENT**

22. In its deliberations, the Board examined all documents cited before it, including the Appellant's personal file, and came out with the following:

(a) By reference to Area staff regulation 111.3, paragraph (2,3,4) concerning the receivability of the appeal, the Board decided to accept the appeal and waive the time limits due to the seriousness of the disciplinary measure implemented on the Appellant.

(b) By reference to the appeal, the Board noted that the Appellant's contention that he has been the victim of a 'campaign of malicious premeditation against the senior Area staff ...' and that the Administration's decision to summarily dismiss him has been motivated by prejudice against him.

(c) By reference to the Administration's reply, the Board noted that the Administration contention that the decision appealed against was within the framework of standing Rules and Regulations.

(d) By reference to the report of the Board of Inquiry dated 25 October 1995, the Board noted that after a thorough study of the allegations made against the Appellant, the Board of Inquiry

concluded that the Appellant is guilty of having accepted bribes from contractors.

(e) The Board noted that the fact that the Appellant refused to sign a letter addressed to his bank instructing the bank to waive the bank secrecy, and the fact that the contractor did sign such a release did cast a shadow of doubt on the behaviour of the Appellant.

(f) The Board also noted that the [$]8,000 were paid from (BNPI) in Saida to Banque de La Mediterranee in Saida in favour of the Appellant, and the fact that the receiving bank confirmed the transaction, did confirm that the Appellant accepted bribes.

The Board also found that the Appellant also failed to produce any counter productive evidence.

In this context, the Board is of the opinion that the Administration has acted within the framework of standing Regulations and Rules and, accordingly, the Board could not establish that the administrative decision of summary dismissal was motivated by prejudice or any other extraneous factors.

IV. RECOMMENDATION

23. In view of the foregoing and without prejudice to any further oral or written submission to any party the Appellant may deem pertinent, the Board unanimously makes its recommendation that the administrative decision appealed be upheld, and that the case be dismissed."

On 9 April 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board noted the finding of the Board of Inquiry that you had accepted bribes from contractors and that you had failed to show that this conclusion was not correct. In the absence of any proved prejudice or other extraneous factors influencing the decision to summarily dismiss you, the Joint Appeals Board recommended that your appeal be dismissed.

I have accepted the conclusions and recommendation of the Board. Accordingly, your appeal is dismissed."

On 12 June 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The evidence on which the BOI based its conclusions about the Applicant was entirely fabricated and the BOI did not make efforts to examine the veracity of the allegations against him.

2. The Applicant, citing Syrian law, maintains that disciplinary action is warranted only if the person receiving a benefit is actually in a position to advance the interests of the person offering such benefit and that no action can be taken against the person receiving the benefit after three years. In this connection, the Applicant claims that he was never in a position to advance the interests of the contractors who allegedly paid him bribes and, furthermore, that more than three years have elapsed since the alleged events took place.

3. The decision to summarily dismiss the Applicant was arbitrary and tainted by prejudice and the influence of extraneous factors.

Whereas the Respondent's principal contentions are:

1. The decision to suspend the Applicant was an appropriate exercise of managerial discretion.

2. The decision to summarily dismiss the Applicant was proper under the Agency's Regulations and Rules and was supported by the evidence.

3. The Respondent contends that the national laws of a third country (in this case, Syria) can have no bearing on the disciplinary processes of a subsidiary organ of the United Nations.

4. The Applicant has failed to show the existence of any defect, such as bias or prejudice, which impugns the decision he challenges.

The Tribunal, having deliberated from 2 to 15 November 1999, now pronounces the following judgement:

I. The case concerns the imposition of a disciplinary sanction. The Applicant was summarily dismissed for serious misconduct on the ground that he had accepted bribes from contractors.

II. The Applicant requested the production of certain documents by the Respondent. The Tribunal finds that it can decide the case on the basis of the evidence on the record and that no further production of documents is necessary. The request is rejected.

III. The Applicant claims that the decision to summarily dismiss him was vitiated by (i) mistake of fact, (ii) error of law, and (iii) prejudice.

IV. The jurisprudence of the Tribunal in disciplinary cases may be generally explained as follows: the Tribunal examines (i) whether the facts on which the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); (iv) whether there has been any procedural irregularity; (v) whether there was an improper motive or abuse of purpose; (vi) whether the sanction is within the power of the Respondent; (vii) whether the sanction imposed was disproportionate to the offence; (viii) and, as in the case of discretionary powers in general, whether there has been arbitrariness. (Cf. Judgements No. 897, *Jhuthi*, (1998); No. 819, *Augustine* (1997)). This listing is not intended to be exhaustive.

V. The BOI found that the Applicant had, among other things, accepted bribes from contractors. The evidence before the BOI consisted of assertions by three contractors that the

Applicant had received payments from them or their companies and documentary evidence of cancelled cheques endorsed in the name of the Applicant, which had been deposited in an account in that name in the Banque de la Mediterranee, Saida Branch.

VI. The first contractor testified before the BOI that he paid a total of $20,000 to the Applicant. Of that sum, $7,000 was paid by way of "pay off" for small projects and $8,000 related to the "Wadi project" in Ein el-Hilweh camp in 1988. The contractor gave evidence that after he was awarded the contract for the above project, the Applicant indicated that he expected to receive a benefit. After the completion of the work, the Applicant demanded 50 per cent of the profit. He was paid $8,000 by bank cheque payable to the Applicant which was deposited in an account, in the Applicant's name, in the Banque de la Mediterranee, Saida Branch. The Applicant denied any knowledge of the transaction. The only question for the BOI was whether, as the contractor alleged and the documents corroborated, a payment of $8,000 had been made to an account maintained by the Applicant. The Applicant refused to allow the BOI to confirm that the account in his name was, in fact, his account, but the BOI concluded that it was. He criticizes the Agency for not paying an "administrative cost of US[$]500" to the bank to obtain a certified copy of the draft associated with the issue of the bank cheque. Noting that the General Manager, BNPI, during a meeting with the Field Finance Officer had indicated that the cheque might not be available, or if available, would not be probative, the BOI preferred a quicker, cheaper and more reliable method of establishing that the Applicant had received the payment, namely inspecting his accounts. The Applicant refused to waive bank secrecy protection. Therefore, the BOI assumed that an inspection of his bank accounts would reveal receipt of the payment. The JAB expressly discussed this transaction in its report and found that the evidence supported the BOI's conclusion.

VII. The same contractor also alleged that he had made a subsequent payment of $5,000 to the Applicant in connection with the installation of sewerage lines in Ein el-Hilweh camp in 1991. The contractor testified that this amount was paid to the Applicant by cheque in part payment of his demand for 20 per cent of the actual value of the project. The Applicant denied receiving the payment and suggested that although the cheque was in his name, someone else had forged a signature on it to collect the funds. Again, although it had a copy of the cheque submitted by the contractor, the BOI was unable to ascertain the endorser and endorsees of the cheque because the Applicant refused to assist the Board with its task. The BOI was told by the contractor's bank that it would not release a certified copy of the cheque without the Applicant's consent. Accordingly, the Board asked the Applicant "to sign a document for submission to the Mediterranean Bank and BNPI [the contractor's bank] relinquishing account secrecy ... and authorizing the Agency to obtain any document relating to the allegations made by [the contractor] on cheques made out in [the Applicant's] name". On the basis of the Applicant's refusal, the BOI assumed that the cheque was paid to the Applicant.

Subsequently, the Applicant obtained a copy of only the first endorsement on the cheque. He denies that it was signed by him. This new evidence (which the Applicant had precluded the BOI from considering) was, however, presented by him to the JAB which, although it did not expressly refer to the transaction in its report, did not find that the Applicant had disproved any of the BOI's conclusions.

VIII. A second contractor alleged that his company paid the Applicant $8,000 in connection with the implementation of a sewerage project, also at Burj el-Barajneh camp. That contractor gave evidence that his company had paid the Applicant $8,000 in installments as a gratuity, representing about 10 per cent of the total value of the project. The Applicant denied the allegation. A third contractor who appeared at the Lebanon Field Office uninvited

brought with him a letter in which he claimed that he had paid the Applicant $5,000 in return for being listed as a "class A" contractor by the Agency. He also claimed to have seen yet another contractor give the Applicant a document, said to be a cheque for $25,000.

The BOI, having evaluated the evidence and the demeanor of the two witnesses, and the Applicant's refusal to allow full disclosure of his banking records, concluded that the allegation had been proved and that the Applicant was guilty of receiving bribes. The JAB did not expressly refer to these transactions in its report either. Instead, it found that the Applicant had not disproved any of the BOI's conclusions.

IX. The Tribunal finds that the evidence of the three contractors and the paper trail which inexorably led to the Applicant, combined with the Applicant's refusal to sign the necessary bank secrecy waivers, presented the BOI with little alternative but to accept the allegations made against the Applicant. In the view of the Tribunal, the BOI was fully justified in finding against the Applicant and in concluding beyond all reasonable doubt that "the Applicant [was] guilty of having accepted bribes from contractors." Likewise, the Tribunal is fully satisfied that the Respondent was entitled to rely on the BOI's findings and to conclude, beyond a reasonable doubt, that the Applicant had engaged in serious misconduct.

X. As to the claim that there was an error of law, the Applicant cites Syrian law and the fact that the incidents of bribery occurred more than three years before the Applicant was disciplined. Syrian law is not relevant. It is the internal law of the Organization that is applicable. There is no statute of limitations in that internal law and the lapse of time did not constitute *laches*. It was not so long as to preclude a fair investigation and, thereby, to constitute a bar to disciplinary proceedings. There was no misapplication of the internal law in this regard. Furthermore, the Tribunal is of the opinion that there was no error of law in the characterization of the corrupt practice in point as serious misconduct. To otherwise characterize it would be absurd.

XI. The Applicant alleges prejudice. The burden is on the party claiming prejudice to prove it. (Cf. Judgement No. 834, *Kumar* (1997)). In this regard mere allegations do not constitute proof. The existence of a reprimand by his Director prior to the BOI's inquiry is not adequate proof either. Thus, the Applicant has not discharged the burden on him of proving prejudice.

XII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

New York, 15 November 1999

Maritza STRUYVENBERG
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/933
15 November 1999

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 933

Case No. 1030: BALKIS

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza, Vice-President; Mr. Kevin Haugh;

Whereas at the request of Mohammed Balkis, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, extended to 31 July 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 24 July 1998, the Applicant filed an application requesting the Tribunal:

"1. To rescind the administrative decision of 6 May 1996 by the Deputy Chief, Personnel Services Division, that I would forfeit my termination indemnity as a result of my transfer to ICAO [International Civil Aviation Organization] (...) and to order the Commissioner-General of UNRWA to pay me termination indemnity for the period of my service in UNRWA as an Area staff member within 30 days of the

judgement by the Tribunal. The amount of indemnity should be calculated in accordance with Area staff rule 109.9.3 (A) of UNRWA (...);

2. To order the Commissioner-General of UNRWA to pay me a yearly interest of 10% on the indemnity amount from the date of my separation from UNRWA as an Area staff member, i.e. 12 January 1996, until the date of payment of that amount;

3. To order the Commissioner-General of UNRWA to pay me an amount of US$ 4,000.00 in compensation for legal consultation fees, telecommunications and postal services expenses;

4. To order the Commissioner-General of UNRWA to pay me an amount to be decided by the Tribunal for discrimination, as there have been a number of other UNRWA staff members who had received termination indemnity when their Area staff permanent contracts were terminated and offered jobs in the International staff category;

5. To order the Commissioner-General of UNRWA to pay me an amount of compensation, to be decided by the Tribunal, for the emotional and psychological damage this case has caused me, in addition to a compensation on the time and effort that I had to invest in this appeal over the last two years."

Whereas the Respondent filed his answer on 25 February 1999;

Whereas the Applicant filed written observations on 19 April 1999;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 9 November 1990, on a fixed term appointment as a Senior Clerk, in the Budget Division at UNRWA Headquarters, Vienna. Effective 1 April 1992, the Applicant accepted a temporary-indefinite appointment as an Area staff member in the post of Assistant Budget Officer (Projects) also at UNRWA Headquarters in Vienna.

On 27 October 1994, the Applicant was informed that he was declared "provisionally redundant with effect from 1 November 1994" as a consequence of the relocation of UNRWA Headquarters from Vienna to Gaza.

Between 13 February 1995 and 12 January 1996, the Applicant was placed on special leave without pay to accommodate his secondment to the United Nations Industrial Development Organization. On 19 October 1995, the Deputy Director of Administration and Human Resources, UNRWA, wrote a letter to the Applicant which stated, *inter alia*, as follows:

> "...
>
> ... should you wish to return to your post, you will be offered the opportunity of a fixed-term appointment as Assistant Budget Officer (Projects), P-2, subject to your relocating to Gaza and serving there for at least one year.
>
> ...
>
> ... you are asked to notify [the] Chief, Personnel Services Division ... which of the following options, which will be subject to the condition expressed in the final paragraph of this letter, you choose:
>
> (A) International appointment as Assistant Budget Officer (Projects), P-2, for a fixed term to end 30 June 1997, or one year after relocation to Gaza, whichever is the later ...
>
> (B) Following your return form special leave without pay, continued service in your post of Assistant Budget Officer (Projects) Grade 14 until its relocation to Gaza and assignment thereafter for one year to Gaza at the same grade and salary scale with payment of the appropriate mission allowance ...
>
> (C) [N]either of the above: termination on redundancy grounds on relocation of your present post to Gaza ...
>
> ...
>
> If you select option (A) or option (B), the notice of provisional redundancy already served on you will no longer apply until the expiry of your International appointment or mission assignment. In that event, you would receive a termination indemnity on separating from the Agency only if (a) your appointment was terminated before the completion of your appointment or mission assignment or (b)

you were not offered or did not accept a further appointment/assignment with UNRWA on its completion."

On 25 October 1995, the Applicant wrote to the Chief, Personnel Services Division, UNRWA, opting for appointment to the International post of Assistant Budget Officer (Projects), P-2.

By letter dated 1 December 1995 from the Director of Administration and Human Resources, UNRWA, the Applicant was offered appointment to the post, effective 13 January 1996. This letter provided, *inter alia*, that the appointment was conditional on him relocating to Gaza and serving there for at least one year. The appointment was for a fixed-term expiring on 30 June 1997 or one year after the relocation of his post to Gaza, whichever was later. The letter also stated, *inter alia*:

"...

As provided in paragraph 3 of Area Staff Circular 5/95, dated 6 April 1995, you will receive a termination indemnity calculated on the basis of your years of service as an Area staff member but based on the rate of salary applicable at the time of its payment if and when you are terminated from the International post on redundancy grounds or, in the event of voluntary separation at the end of the fixed-term appointment but not during it.

...

By accepting this offer of appointment you will no longer be regarded as provisionally redundant.

This offer of appointment is conditional on your acceptance of the above terms.

..."

On 11 December 1995, the Applicant signed the offer of appointment indicating "I hereby accept the above terms". On the same date, he also signed the letter of appointment consistent with the offer, effective 13 January 1996.

On 24 April 1996, the Chief, Personnel Branch, International Civil Aviation Organization (ICAO), wrote to the Director of Administration and Human Resources, UNRWA, advising him that the Secretary-General, ICAO, had decided to "appoint [the Applicant to the post of ... Finance Officer, Finance Branch, ICAO, Montreal ... on a temporary basis for a period of one year." ICAO sought UNRWA's agreement to the Applicant's release on transfer in accordance with the terms of the Inter-Agency Agreement Concerning Transfer, Secondment or Loan of Staff.

On 6 May 1996, the Deputy Chief, Personnel Services Division, UNRWA, wrote to the Applicant, confirming the Applicant's agreement "to be released on Inter-Agency Transfer to ICAO, Montreal, effective 1 July 1996." He further stated:

> "I also confirm that you are fully aware that, as a consequence of this transfer, you will forfeit payment of termination indemnity in respect of your previous Area staff appointment with the Agency. ..."

On 15 May 1996, the Officer-in-Charge of the Department of Administration and Human Resources, UNRWA, advised ICAO that UNRWA agreed to release the Applicant on Inter-Agency Transfer, effective 19 August 1996.

On 27 June 1996, the Applicant wrote to the Director of Administration and Human Resources, UNRWA, referring to the 6 May letter from the Deputy Chief, Personnel Services Division, UNRWA, and requested him to reconsider the Administration's decision "to deny me the right to receive termination indemnity as a result of my transfer to the International Civil Aviation Organization (...)". He stated, *inter alia*:

> "...
>
> 4. The offer I received from UNRWA to relocate to Gaza has neither invalidated the redundancy notice nor has it compensated me for my lost temporary indefinite contract. In fact, it has merely postponed my redundancy and the payment of my termination indemnity until the end of the fixed-term appointment in Gaza.

5. The payment of termination indemnity is a right which I, like others, have acquired during my service as an Area staff member. The Agency should therefore have paid me the amount due to me when I transferred to an International post in January 1996, i.e. the Administration had no legal right to withhold my separation entitlements.

6. Furthermore, there are many cases where Area staff members were transferred to International posts within UNRWA and nevertheless received termination indemnities. I am simply requesting equal treatment.

7. I believe that my transfer to ICAO is in line with UNRWA's policy of creating employment in Gaza. Leaving a vacant post behind me in UNRWA HQ(G) is beneficial for both myself and the objectives of the Agency.

..."

On 4 October 1996, the Applicant wrote to the Director of Administration and Human Resources, UNRWA, informing him that he had not receive a reply to his letter dated 27 June 1996.

On 14 October 1996, the Area Personnel Officer, UNRWA, informed the Applicant that the Director of Administration and Human Resources, UNRWA, had responded to his letter of 27 June 1996, on 22 July 1996. He attached copy of the letter. The said letter stated as follows:

"...

When you were appointed to an International post effective 13 January 1996, one of the conditions of employment set out in the letter from my predecessor dated 1 December 1995, which you signed as accepting, provided as follows:

> 'As provided in paragraph 3 of Area staff circular 5/95, dated 6 April 1995, you will receive a termination indemnity calculated on the basis of your years of service as an Area staff member but based on the rate of salary applicable at the time of its payment if and when you are terminated from the International post on redundancy grounds or, in the event of voluntary separation at the end of the fixed-term appointment but not during it'.

The letter also states that by accepting this offer of employment, you will no longer be regarded as provisionally redundant.

The above condition provides that you will receive a termination indemnity in the event of voluntary separation at the end of your fixed-term appointment, 'but not during it'. Therefore, under the terms of your contract of employment with the Agency you are not entitled to a payment [of] a termination indemnity. As you will recall, this was explained to you by my predecessor in May of this year, and at that time you indicated full understanding of the situation, which was again explained in the letter of 6 May from the Deputy Chief, Personnel Services Division.

Having reviewed the circumstances of your case, I conclude that you have no entitlement to termination indemnity. Therefore, I regret that I cannot accede to your request for payment."

On 4 November 1996, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 1 December 1997. Its evaluation, judgement, recommendation and dissenting opinion read as follows:

"**III. EVALUATION AND JUDGEMENT**

27. In its deliberations the Board examined all documents cited before it including the Appellant's personal file and came out with the following:

(a) By reference to the appeal the Board noted the Appellant's contention that he is entitled for termination indemnity.

(b) By reference to the Administration's reply the Board noted the Administration's contention that the Appellant has failed to discharge the onus on him under Area staff rule 111.1, paragraph 4.

(c) The Board by majority vote noted that the Appellant had a contractual agreement which he signed without any objection to its contents. Furthermore, the Appellant did not complete the one year qualifying service for receiving the termination indemnity, i.e. had he not voluntary separated from the Agency prior to the end of that year he would upon separation from the service of the Agency have received a termination indemnity.

(d) In this context, the Board by majority vote is of the opinion that the Administration has acted within the framework of standing Rules and Regulations.

IV. RECOMMENDATION

28. In view of the foregoing, and without prejudice to any further oral or written submissions to any party, the Appellant may deem pertinent, the Board by majority vote makes its recommendation to uphold the Administration's decision appealed against and that the cases be dismissed.

DISSENTING OPINION ...

I disagree with the Board in that there was a precedent, the case of Mr. Al-Omari, in which the Commissioner-General agrees that the rules which govern these situations are absent, I am of the opinion that since there are no rules governing these situations, it is unfair that some staff members should receive their termination indemnities and some shouldn't.

I am also of the opinion that the contractual agreement that the Appellant signed with the Administration, was accepted by the Appellant because he had no other choice but to accept it with its terms and conditions or stay with no work.

As for the Appellant resigning before the one year condition to which he receives his termination indemnity after he completes this one year, the Appellant had to resign to accept an offer in the International Civil Aviation Organization, ..., to insure his future which UNRWA did not by giving him only a one year contract.

By reference to Area staff circular 5/95, paragraph 3/b, the Appellant eventually will be eligible for the termination indemnity because he is still a United Nations staff member.

I recommend that the Administration's decision appealed against be reviewed."

On 31 December 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him, *inter alia*, as follows:

"...

The Board (with one member dissenting) found that your release from the Agency was subject to a voluntary contractual agreement, signed without any objections to its contents. Furthermore, the Joint Appeals Board concluded that you had not completed the one year qualifying service for receiving the termination indemnity. Therefore, it recommended that your appeal be dismissed. (The dissenting member considered that it was unfair that some staff members should receive their termination indemnities while others would not and, that therefore, a termination indemnity should have been paid).

I have accepted the Board's majority recommendation and accordingly I dismiss your appeal.

..."

On 24 July 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The termination indemnity that resulted from terminating the Applicant's permanent area staff appointment should have been paid to him when UNRWA ended that appointment.

2. The Applicant had an acquired right to a termination indemnity for his services as an Area staff member in accordance with the Area Staff Regulations and Rules. His acceptance of an international appointment should not have been made conditional on his waiver of this right. Similarly, he should not have lost this right as a consequence of his transfer to ICAO.

3. His letter of appointment as an international staff member did not state specifically that the waiver of his right to receive a termination indemnity was a condition applicable to obtaining his new appointment. The attached letter offering the appointment dated 1 December 1995 was not a part of his letter of appointment. Even if the 1 December letter had been part of his letter of appointment, its interpretation as a waiver of his claim to a termination indemnity and renunciation of an acquired right lacked validity.

Whereas the Respondent's principal contention is:

The Applicant lost any entitlement to payment of a termination indemnity by reason of his transfer before the completion of his international contract.

The Tribunal, having deliberated from 5 to 15 November 1999, now pronounces the following judgement:

I. The Applicant's case, with the legal questions it raises, is not without analogy to other cases on which the Tribunal has been called upon to take a decision. More specifically, and as the Respondent notes, there are similarities between the case which gave rise to Judgement No. 886, *Al-Omari* and the one arising from the Applicant's request. The present case is more complex than the *Al-Omari* case.

Like the Applicant in the *Al-Omari* case, Mr. Balkis held an Area staff appointment with UNRWA for a certain time (from 1990 to 1994), whereas upon the relocation of that Agency's headquarters to Gaza, a proposal was made to the Applicant to receive an international appointment in this new posting. Nevertheless, while the Applicant *Al-Omari* was offered a permanent international appointment, the Applicant Balkis was only offered an international appointment for one year, with no promises for the future at the end of that period.

II. In accordance with the Tribunal's jurisprudence in the *Al-Omari* case, a staff member who, at the end of a fixed-term Area staff appointment, obtains an international appointment, is not entitled to a termination indemnity at the end of his fixed-term Area staff appointment. There is no separation between the two successive posts and hence no termination which would warrant entitlement to an indemnity. It is only at the end of his fixed-term international appointment that the staff member can, if he is terminated, receive termination indemnities

due in respect of his Area staff appointment and his international appointment. This jurisprudence is fully applicable to the Applicant with regard to his obtaining an international appointment.

III. Despite having accepted an international appointment in Gaza for one year, the Applicant voluntarily terminated this appointment after the first three months by accepting the offer which was made to him to become a staff member of the International Civil Aviation Organization in Montreal. The Applicant, who thus resigned permanently from UNRWA, is asking that the indemnity provided for in staff rule 109.9 be paid to him for his services as an Area staff member of UNRWA from 1990 to 1994.

It appears, however, that at the time of his appointment as an international staff member, the Applicant was informed that, in accordance with the provisions of Area staff circular 5/95 of 6 April 1995, he would receive a termination indemnity for his services as an Area staff member, but only at the end of his fixed-term international appointment and not during it. The letter sent to him on 1 December 1995 stated explicitly that:

> "As provided in paragraph 3 of Area staff circular 5/95, dated 6 April 1995, you will receive a termination indemnity calculated on the basis of your years of service as an Area staff member but based on the rate of salary applicable at the time of its payment if and when you are terminated from the International post on redundancy grounds or, in the event of voluntary separation at the end of the fixed-term appointment but not during it."

This text prohibited the payment of a termination indemnity to the Applicant if he voluntarily ended his employment before its termination, as was provided for at the time of his appointment.

The Tribunal considers, therefore, that the Applicant, having accepted the conditions which were put to him at the time of his appointment to Gaza, has voluntarily forfeited his right to receive a termination indemnity for his services with UNRWA.

IV. For these reasons, the Tribunal rejects the application.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Vice-President

Kevin HAUGH
Member

New York, 15 November 1999

Maritza STRUYVENBERG
Executive Secretary